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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,124	01/03/2002	Walter E. Krumm SR.	6811-1	1033

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,124

Applicant(s)

KRUMM ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 17, 2003 has been entered.

Status of application

2. Claims 1, 3-21 are pending, claim 21 having been added.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Virnig (US 3,830,387). Virnig teaches a cart having a body (20) and a plurality of spaced wheels (38) attached to the body, a partial support ring (74, 76) for engaging an object, which is rotatably attached to the body (through 16, 78, 80, 82), a handle (64) which extends in a transverse direction (i.e., orthogonally) with respect to an extension (54) in a direction away from the wheels, and including a lock (88, 90, 91, 92, 94, 95) for restricting movement of the ring portions and which may be selectively engaged and/or disengaged by a user independently of the presence of an element to be supported by the ring.

Claim Rejections - 35 USC § 103

5. The pertinent portions of 35 USC 103 can be found in a previous office action.

6. Claims 1, 3-9 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Virnig (US 3,830,387-- cited in the previous application, and by applicant in the instant IDS) in view of Gunlock et al. (US 5,378,004-- again, cited in the previous application, and by applicant in the instant IDS). Virnig teaches a cart having a body (20) and a plurality of spaced wheels (38) attached to the body, a partial support ring (74, 76) for engaging an object, which is rotatably attached to the body (through 16, 78, 80, 82), a handle (64) which extends in a transverse direction (i.e., orthogonally) with respect to an extension (54) in a direction away from the wheels, and including a lock (88, 90, 91, 92, 94, 95) for restricting movement of the ring portions, and which may be selectively engaged and/or disengaged by a user independently of the presence of an element to be supported by the ring; the ring portions each including blocking portions (85) for reducing the effective inner diameter of the ring portions. The reference of Virnig fails to teach the ring portions as a single ring having a flexibility and an open mouth portion. Gunlock et al. teach a cart having a body (26) with a single flexible support ring (610) pivotally mounted (618a, 618b) on the body, and including two end portions (614, 615) between which a mouth is formed. It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the dual ring portions of the cart of Virnig with the single flexible ring taught by Gunlock et al. for the purpose of allowing the ring to be used as a band clamp in order to facilitate positive retention of a brake drum under numerous loading conditions.

As regards claim 18, the reference to Virnig as modified by Gunlock et al. fails to teach the mouth as being oriented upwardly. It is well known to reorient existing already taught elements to further facilitate operation and balancing, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to reorient the opening of the mouth of the support ring of Gunlock et al. to be directed upwardly for the purposes of (a) easy access to the latching elements and (b) to balance the load symmetrically.

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As regards claim 20, the reference of Virnig as modified by Gunlock et al. fails to teach the block portions as being removably attached to the ring portions, however making an integral element removable for the purpose of reconfiguration is well known in the art, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the block portions (85) removable from the ring portions (e.g., through a screw and threaded aperture connection) for the purpose of allowing reconfiguration of the ring portions.

7. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Virnig in view of Gunlock et al. and Martin et al. (US 5,513,939— cited in the previous application and by applicant in the instant IDS). The reference of Virnig as modified by Gunlock et al. fails to teach a locking chain with an S-hook for engaging the drum. Martin et al. teach a carrier for an elongated cylindrical tank, the cart including a chain (32) connected to a handle with a loop-shaped hook (30), the chain further having an s-hook (34) for engaging a portion of the tank for securing it when the cart is in use. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a chain, attaching hook and s-hook as taught by Martin et al. to the cart of Virnig as modified by Gunlock et al. such that it may engage the item carried (i.e., Virnig's or Gunlock's brake drum) for the purpose of securing the item such that it may be easily controlled and manipulated upon release of the lock.

As regards claim 13, the reference of Virnig as modified by Gunlock et al. and Martin et al. fails to teach the block portions as being removably attached to the ring portions, however making an integral element removable for the purpose of reconfiguration is well known in the art, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the block portions (85) removable from the ring portions (e.g., through a screw and threaded aperture connection) for the purpose of allowing reconfiguration of the ring portions.

Response to comments

8. Applicant's arguments have been carefully considered. As regards the functional limitations directed to the operation of the locking device, the references as applied are capable of meeting the function to the extent that it has been claimed, since the lock is selectively operable by a user.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As regards applicant's comments directed to the differences between the references of Virnig and Gunlock et al., the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the examiner has not suggested that it would have been obvious to incorporate every structural element of the carrier of Gunlock et al. into the carrier of Virnig, but instead that it would have been obvious to replace the partial support rings taught by Virnig with the support ring scheme taught by Gunlock et al.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326
After Final Amendments: 703-872-9327
Customer Service Communications: 703-872-9325

F. VANAMAN
Primary Examiner
Art Unit 3618



10/14/03